THE HON'BLE SRI JUSTICE C.V. RAMULU

+W.P.No.24802 of 2004

%Dated 07-9-2007

Between:

Janapareddy Venkata Ramana … Petitioner

and

The Appellate Authority under
Payment of Gratuity Act and
Deputy Commissioner of Labour,
Visakhapatnam & others … Respondents

!Counsel for the petitioner : Ms. B.Malleswari

^Counsel for Respondents 1&4: G.P. for Labour
Counsel for Respondents 2&3: Smt. B.G. Umadevi

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? Cases referred

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Friday, 7th day of September,2007

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ORAL ORDER:

This Writ Petition is filed seeking a Certiorari to call for the records relating to the Order dated 30-10-2004 passed in Case No.PG 2/2004 on the file of the Appellate Authority under Payment of Gratuity

Act and Deputy Commissioner of Labour, Visakhapatnam and to quash the same as arbitrary and illegal.

Petitioner is the employee and respondents 2 and 3 are the employers.

It appears, while the petitioner was working as Assistant Depot Clerk under the 2nd respondent, was issued with a charge sheet dated 25.10.2000 framing the following charge:

> "You have not so far remitted in Depot Manager's Office, Paderu, the amount of Rs.2,910/- (Rupees Two thousand nine hundred and ten) which was withheld out of the amount of Rs.40,500/- paid to you by the D.C.(E) on 4.10.2000 towards disbursement of festival advance to the Mechanical staff, which comes under misconduct vide Reg.No.28(xxxi) of APSRTC Employees' (Conduct) Reg.1963".

and was proceeded with departmentally. Ultimately, he was removed from service by an Order dated 19-2-2001 and the penultimate paragraphs of the said Order reads as under:

> "Hence, it is hereby ordered that Sri J.V. Ramana, E.58139, A.D.C., be removed from service of the Corporation with immediate effect and that the amount of Rs.2,910/- (Not refunded withheld festival advance amount) be recovered from his settlement amount. He shall return all the items i.e., uniform and the other articles, which the Corporation supplied to him, within 7 days from the date of receipt of the Proceedings. Failing which, the value of the items will be recovered from his settlement amount.
>
> An appeal against these Proceedings lies with the Dy.Chief Traffic Manager, Visakhapatnam (R). It may be preferred within a period of 2 (two) months from the date of receipt of the Proceedings."

Aggrieved by the said Order, an appeal was preferred by the petitioner. According to the petitioner, the same was not considered by the appellate authority-Deputy Chief Traffic Manager. Thereafter, he preferred a Review Appeal before the Regional Manager, APSRTC, Visakhapatnam, but the same was also not considered. In the meantime, he attained the age of superannuation of 58 years. Though

he was removed from service, according to the petitioner, he is entitled for gratuity and other benefits, since the same were not denied under the removal order passed by the disciplinary authority. When there was no response, petitioner approached the Authority under the Payment of Gratuity Act and Assistant Commissioner of Labour, Visakhapatnam. The said application was resisted by the Management by filing a counter denying the allegations made by the petitioner and it is stated that the petitioner joined the services of the Corporation/Opposite Parties on 26.9.1975 and was removed from service on 19.2.2001. Therefore, there was no cause of action ever arose and the same was invented for the purpose of filing frivolous application before the Authority. Petitioner is not entitled for the gratuity, since he was removed from service, as he did not refund the undisbursed festival advance amount of Rs.2,910/-, which constituted an offence involving moral turpitude under Section 4(6)(b)(ii) of the Payment of Gratuity Act,1972 (for short 'the Act'). Therefore, the very application is not maintainable, either in law or on the facts. Before the primary Authority, petitioner examined himself as A.W.1 and marked documents – Exs.A1 to A9. On behalf of the Management, neither oral nor documentary evidence was adduced. After a detailed consideration of the entire evidence on record, the Authority has recorded a finding that the opposite party/Management has not produced any evidence to show that the misconduct for which the petitioner was removed from service falls under Section 4(6)(b)(ii) of the Act and it is difficult to hold that the entire gratuity of the petitioner herein stands forfeited. It is further recorded that the case comes under Section 4(6)(a) of the Act and, therefore, the respondent-opposite party is entitled to deduct the loss caused to the Corporation and to pay the remaining amount with interest at 12% per annum with effect from 30-

6-2002 and to pay the total amount by way of Demand Draft drawn in favour of the petitioner with the Assistant Commissioner of Labour, Circle-I, Visakhaptnam within 30 days from the date of receipt of the order. Aggrieved by the same, the Management carried the matter in appeal before the Appellate Authority under the Payment of Gratuity Act and Deputy Commissioner of Labour, Visakhapatnam in Case No.PG 2 of 2004. The appellate authority, however, held that the petitioner has not challenged the Order of removal passed on 19-2-2001 and, therefore, he is not entitled for gratuity and the same shall be treated as forfeited under Rule 7 of A.P. Payment of Gratuity Rules,1972 and as such, the appeal is liable to be allowed. Accordingly, the appeal was allowed and the Order of the primary authority was set aside by an Order dated 30-10-2004. Aggrieved by the same, the present Writ Petition is filed.

Learned counsel for the petitioner strenuously contended that the order of removal passed by the 2nd respondent herein on 19-2-2001 does not disentitle the petitioner from claiming gratuity and other benefits accrued to his account as on the date of his removal from service. In fact, the very removal Order passed by the disciplinary authority would indicate that an amount of Rs.2,910/- (not refunded withheld festival advance amount) be recovered from settlement amount of the petitioner. Therefore, the disciplinary authority gave a finding that the petitioner caused loss to the funds of the Corporation and as such, he is supposed to make good of the same. That was, in fact, recovered from the settlement amounts of the petitioner. As such, the refusal to pay the gratuity accrued to the account of the petitioner, in view of his removal from service, is arbitrary and illegal. The removal order itself does not deprive the petitioner from claiming the gratuity amount. The primary authority had rightly construed that the

charge against the petitioner was not a moral turpitude and it was only causing loss of funds of the organization; therefore, rightly declared that the petitioner is entitled for gratuity. The appellate authority misconstrued the provisions of Section 4(6) of the Act and then erroneously held that the petitioner involved in a case of moral turpitude and, therefore, he is not entitled for gratuity.

Learned counsel for the respondents supported the Order passed by the appellate authority and stated that the appellate authority has rightly come to the conclusion that the petitioner has committed embezzlement of funds of the Corporation and, therefore, it is an act of moral turpitude and thus, he is not entitled to claim gratuity under Section 4(6)(b)(ii) of the Act. Petitioner has not made out any case calling for interference of this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned Order and other material made available on record.

The only question that arises for consideration is whether the petitioner was involved in any act of moral turpitude depriving him of the payment of gratuity for the service rendered by him in the respondent-Corporation from 26-7-1975 to 19-2-2001 in view of Section 4(6) of the Act ?

Before going into the merits of the case, it is relevant to notice Section 4(6) of the Act, which reads as under:

> "**4. Payment of gratuity:-** (1) to (5)…….
> (6) Notwithstanding anything contained in sub-section (1)—
> (a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of damage or loss

so caused;

(b) the gratuity payable to an employee may be wholly or partially forfeited-

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

The gratuity of an employee can be forfeited to the extent of damage or loss so caused by an employee whose services have been terminated for any act, wilful omission or negligence etc.

Section 4(6)(b)(ii) of the Act contemplates that gratuity can be denied to an employee whose services have been terminated for his riotous or disorderly conduct or for any other act of violence or for his involvement in an offence involving moral turpitude, provided the same was committed in the course of employment. Thus, the first part contemplates denial of a portion of the gratuity equivalent to the loss caused by the employee to the organization when his services were terminated. The second part contemplates involvement of the terminated employee in any disorderly behaviour, moral turpitude etc., mostly criminal in their nature. The charge, as noticed above, against the petitioner was that he had not so far remitted in the Depot Manager's Office, Paderu an amount of Rs.2,910/-, which was withheld out of an amount of Rs.40,500/- on 4-10-2000 towards disbursement of festival advance to the mechanical staff, which was a misconduct vide Regulation 28(xxxi) of Andhra Pradesh State Road Transport Corporation Employees' (Conduct) Regulations,1963. This was only the charge against the petitioner and the disciplinary

authority gave a finding through its Proceedings dated 19-2-2001 that the charge against the petitioner was proved; therefore, the penalty of removal from service was fit and proper to be imposed against the petitioner. There was no finding that the petitioner was involved in any moral turpitude or he was involved in any case of disorderly or riotous behaviour. It was a simple case of removal from service on the finding recorded by the Enquiry Officer that the charges levelled against the petitioner were proved and the disciplinary authority while passing the order of removal recorded that the amount of Rs.2,910/- shall be recovered from the settlement amount against the petitioner. No criminal case was booked against the petitioner showing that it is a moral turpitude or a disorderly behaviour as contemplated under Section 4(6)(b)(i) and (ii) of the Act; therefore, the act even as per the charge cannot be said to be either a riotous or disorderly behaviour or is a moral turpitude as is generally understood.

'Moral turpitude' is a phrase that can hardly be defined with accuracy. Normally, as this phrase is understood, it is used in law with reference to crime, which refer to conduct that is inherently base, vile or depraved and contrary to the accepted rules of morality. The words 'moral turpitude' do not refer to conduct which made punishable as a crime was generally not regarded as a wrong or corrupt, whether it is or is not punishable as a crime. The meaning assigned to the words 'moral turpitude' in various dictionaries is an act of baseness, vileness, or the depravity in private and social duties, which man owes to his fellow man or to society in general, contrary to accepted and customary rule of right and duty between man and man. The word 'turpitude' is also explained as inherent baseness or vileness of principles or action; shameful wickedness depravity.

From the above, it is clear that necessarily every act punishable in law would not amount to an offence involving moral turpitude. The act must be harmful to society in general or contrary to accepted and customary rules or rights and duties between man and man. Simple violation of a particular statute cannot amount to commission of offence of act involving moral turpitude. No absolute standardization can be laid down for deciding whether a particular act is to be considered one involving moral turpitude. The general tests which should be applied and which should in most cases be sufficient for enabling one to arrive at a correct conclusion on the question requires to be examined in each case. Every false, *mala fide* statement made by a person may not be moral turpitude, but it would be so, if it discloses vileness or depravity in the doing of any private and social duty, which a person owes to his fellowmen or to the society in general. Even in a case of misconduct, the gravity of punishment cannot be considered to be involving in a moral turpitude. It appears to be clear that if a member of the police Force is guilty of having been found drunk at a public place or to have become habituated to liquor and if he is convicted by a Criminal Court, then his conviction should be held to an extent as involving moral turpitude. This is not one such case where the appellate authority cared to examine and find out whether it is an act of moral turpitude. Obviously, there has been no application of mind in forming the opinion by the appellate authority.

In fact, I am of the opinion that unless and until it is proved to be a riotous or a disorderly behaviour on the part of the petitioner or he has been involved in any act, which is an offence triable by a competent criminal Court, amounting to moral turpitude, he cannot be denied with the gratuity as contemplated under Section 4(6)(b)(ii) of the Act. Therefore, I am of the opinion that the Authority under the

Payment of Gratuity Act rightly held that the case of the petitioner falls into Section 4(6)(a) and not under Section 4(6)(b)(i) or (ii) of the Act. The appellate authority without appreciating the provisions of Section 4(6) of the Act has simply stated that the petitioner has not challenged the Order of removal from service and as such, the gratuity payable to the petitioner is liable to be forfeited under Rule 7 of the A.P. Payment of Gratuity Act,1972. Rule 7 of A.P. Payment of Gratuity Rules (Form 'U' - Abstract of Act and Rules) added by G.O.Ms.No.464, dated 1-7-1981 reads as under:

> "**7. Forfeiture of Gratuity:-** (1) The gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss, to or destruction of property belonging to the employer, shall be forfeited to the extent of damage or loss so caused.
>
> (2) The gratuity payable to an employee shall wholly be forfeited—
>
> (a) if the services of such employee have been terminated for his riotous or disorderly conduct or for any other act of violence on his part; or
>
> (b) if the services of such employee have been terminated for any act, which constitutes as offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

The said Rule is in *pari materia* with the provisions of Section 4(6) of the Act. Further, in the order of removal passed by the Depot Manager, APSRTC, Paderu Depot, dated 19-2-2001, what was exactly the explanation offered by the petitioner was not recorded, except saying that the petitioner submitted his explanation confessing his offence and requesting to recover an amount of Rs.2,910/- either from his salary or from the Provident Fund amount due to him. So also, what exactly is the explanation offered by the petitioner to the show cause notice dated 29-1-2001 was not recorded. Why the

petitioner has admitted and under what circumstances he has admitted, is not available on record or it is noted in the removal order, except saying that in the explanation offered by the petitioner, there are no points worth consideration. There was no finding that the petitioner was dishonest or there was any charge that he had misappropriated an amount of Rs.2,910/-. Therefore, on mere removal of the petitioner in view of the above charge, it cannot be said that the charge proved amounted to moral turpitude, and the petitioner cannot be deprived of gratuity etc.

For all the above reasons, I am of the opinion that the appellate authority has grossly erred in reversing the well considered and reasoned order passed by the Authority under the Payment of Gratuity Act and Assistant Commissioner of Labour, Circle I, Visakhapatnam in Case No.P.G.10 of 2002, dated 2-8-2003. As such, the order of the appellate authority-1st respondent dated 30-10-2004 in Case No.PG 2/2004 is liable to be set aside and is accordingly, set aside. The Order passed by the Authority under the Payment of Gratuity Act and Assistant Commissioner of Labour, Circle I, Visakhapatnam in Case No.P.G. 10 of 2002, dated 2-8-2003 is upheld.

Accordingly, the Writ Petition is allowed. No order as to costs.

-9-2007

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